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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Technical Requirements to Enable	)	ET Docket No. 97-206
Blocking of Video Programs Based on	)	
Program Ratings	)	
	)	
Implementation of Sections 551(c), (d) and	)	
(e) of the Telecommunications Act of 1996	)	

TO: The Commission

Joint Reply Comments of the National Association of Broadcasters, the National Cable Television Association, and the Motion Picture Association of America

The National Association of Broadcasters, the National Cable Television Association, and the Motion Picture Association of America (hereinafter "Joint Commenters") hereby submit this reply to the comments filed on the Commission's *Notice of Proposed Rulemaking* in this proceeding.

Many of the comments received by the Commission address issues that were discussed in Joint Commenters' initial comments which do not require repetition. A number of comments, particularly from manufacturers, stressed the delays and complexities that would result from any FCC requirement that the V-chip accommodate ratings systems in addition to the TV Parental Guidelines. Joint Commenters agree with those comments and with the contention that the most

09

effective step for the Commission to take now would be for it to find the TV Parental Guidelines acceptable and to adopt a technical standard in this proceeding as quickly as possible.[1]

Joint Commenters note that, while all of the manufacturers' comments asked the Commission to leave V-chip interface design issues to the marketplace, no comments disagreed with our contention that the Commission should ensure that all television sets react to ratings encoded in the Vertical Blanking Interval (VBI) in a consistent manner. *See* Joint Comments at 3-4.[2]

Two sets of comments raised significant issues that were not addressed in our initial comments. The comments filed by Tim Collings and by OKTV both ask the Commission to mandate particular additional ratings systems for inclusion in the V-chip, and to require broadcasters and other video distributors to include on line 21 of the VBI ratings supplied by FCC-approved organizations.[3]

The Collings and OKTV proposals go far beyond the authority granted the Commission in Section 551 of the Telecommunications Act. They fly in the face of the language of the statute and its legislative history. In particular, the proposal that the Commission require

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1 *See, e.g.,* Comments of the Consumer Electronics Manufacturers Assn., ET Dkt. No. 97-206 (filed Nov. 24, 1997) at 4, 9; Comments of Thomson Consumer Electronics, Inc., ET Dkt. No. 97-206 (filed Nov. 24, 1997) at 6-9 & n.5; Comments of Matsushita Electric Corp. of America, ET Dkt. No. 97-206 (filed Nov. 24, 1997) at 7, 9-10.

2 For example, the agreement between children's advocacy groups and Joint Commenters concerning the revised TV Parental Guidelines provides that parents will be able to display program ratings during the course of a program through use of a display button. *See* Joint Comments at 7.

3 Comments of Tim Collings, *et al.*, ET Dkt. No. 97-206 (filed Nov. 21, 1997) at 4, 6; Comments of OKTV, ET Dkt. No. 97-206 (filed Nov. 24, 1997) at 16-17.

transmission of ratings information from outside organizations with government imprimatur would raise serious constitutional questions.

Nothing in the statutory language suggests that Congress contemplated the use of more than one ratings system. Under 47 U.S.C. § 303(w)(1), the Commission would have been obliged — if the industry had not developed a voluntary ratings system — to prescribe "guidelines and recommended procedures for the identification and rating of video programming." The statute includes no mention of other systems in addition to the one the FCC would have adopted. Further, the Commission did not have to appoint an advisory committee or to adopt a ratings system because, in accordance with Section 551(e)(1)(A) of the Telecommunications Act, television programmers and distributors "established voluntary rules for rating video programming." Section 303(x) of the Communications Act, which requires the Commission to establish standards for the V-chip, speaks of a mechanism "to block display of all programs *with a common rating*" (emphasis added). Had Congress envisioned multiple ratings systems, it is unlikely that it would have referred to one *rating*.

The legislative history is even more explicit. The Conference Report describes the bill as requiring the Commission to establish an advisory committee to recommend "*a system* for rating video programming." H.R. REP. NO. 458, 104th Cong., 2d Sess. 195 (1996)(emphasis added). The Commission would be authorized to prescribe "a rating system" based on the advisory committee's recommendation. *Id.* The Report states that the FCC would not have to develop a ratings system if "*an* acceptable voluntary system" is proposed by the industry. *Id.* (emphasis added). The report on the Conference Bill consistently refers to *one* ratings system.

Thus, the Telecommunications Act provides no support whatever for the Commission's selection of additional ratings systems to be transmitted in the VBI. OKTV (Comments at 19-20) cites a number of familiar cases holding that the Commission's powers under the public interest standard are sufficient to allow it to take whatever steps are reasonably necessary to accomplish Congress' goals. That proposition has no application here where Congress explicitly gave the Commission authority to take certain actions. Where Congress has acted with great specificity, it would be extraordinary for the Commission to follow OKTV's suggestion and adopt a ratings regime wholly different from the one Congress envisioned.

The suggestion of both Collings and OKTV that the Commission could require broadcasters and other video distributors to include in line 21 of the VBI ratings supplied by third party ratings organizations is even further outside the scope of the Commission's authority. 47 U.S.C. § 153(10) states that "a person engaged in radio broadcasting shall not . . . be deemed a common carrier." Section 326 of the Act further provides that "no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication." In the same vein, Section 621(c) of the Act provides that a "cable system shall not be subject to regulation as a common carrier . . by reason of providing any cable service." These provisions make clear that Congress provided no authority to the Commission to dictate the content of video programming or to require the transmission of government-approved material.

Consistent with those limitations, Congress carefully provided in the Telecommunications Act that the decision to rate programs was entirely voluntary. All that the Act requires is that, if a program has been voluntarily rated in accordance with the ratings system accepted by

the Commission, distributors of that program cannot strip the ratings information. 47 U.S.C. § 303(w)(2). The Conference Report emphasized that "the conferees do not intend that the Commission require the adoption of the recommended rating system *nor that any particular program be rated.*" H. REP. NO. 458, 104th Cong., 2d Sess. 195 (1996)(emphasis added). The Collings and OKTV proposals cannot, therefore, be reconciled with Congress' avoidance of mandatory ratings.[4]

A rule that required distributors of video programming to encode ratings provided by Commission-designated organizations — as opposed to the voluntary system envisioned by Congress — would also violate the First Amendment. Government requirements that compel speech because of its content clearly raise the highest of First Amendment concerns. *See Turner Broadcasting System v. FCC,* 512 U.S. 622, 114 S. Ct. 2445, 2459 (1994); *Riley v. National Federation for the Blind,* 487 U.S. 781 (1988); *Pacific Gas & Electric Co. v. Public Utilities Commission,* 475 U.S. 1 (1986); *Miami Herald Publishing Co. v. Tornillo,* 418 U.S. 241 (1974).

Further, government-sponsored labeling of speech may have the same unconstitutional effects as direct prohibitions. *See Bantam Books v. Sullivan,* 372 U.S. 58, 66 (1963)("It is characteristic of the freedoms of expression in general that they are vulnerable to gravely damaging yet barely visible encroachments."). Unlike the labeling requirement upheld in *Meese v. Keene,* 481 U.S. 465 (1987), the avowed purpose of the ratings system advocated by OKTV is to add a pejorative label to certain programming because it is claimed to be harmful. Further, the

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[4] Furthermore, the July 10, 1997 agreement between children's advocacy groups and Joint Commenters provides that only the TV Parental Guidelines and the MPAA movie ratings system should be mandated for inclusion in the V-chip.

labels at issue in *Meese* could be removed by film distributors. *Id.* at 495. OKTV and Collings would require distribution of their ratings, a rule that would fundamentally alter the voluntary system Congress sought to bring about.

Requiring distributors of video programming to include ratings developed by FCC-approved third parties would thus violate television programmers and distributors' First Amendment rights. The Commission should avoid crafting rules that would be so inconsistent with Congress' intentions and that would create such a constitutional issue. *See DeBartolo Corporation v. Florida Gulf Coast Building & Construction Trades Council*, 485 U.S. 568, 575 (1988); *St. Martin Evangelical Lutheran Church v. South Dakota*, 451 U.S. 772, 780 (1981).

Conclusion

For the reasons set forth in Joint Commenters' initial comments and in this reply, the Commission should move promptly to find that the TV Parental Guidelines are acceptable, and to establish technical standards for the V-chip that will permit its common operation in new

television receivers. The Commission should reject calls to mandate the availability of additional ratings systems or to change the intended operation of the TV Parental Guidelines.

Respectfully submitted,

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December 8, 1997

Certificate of Service

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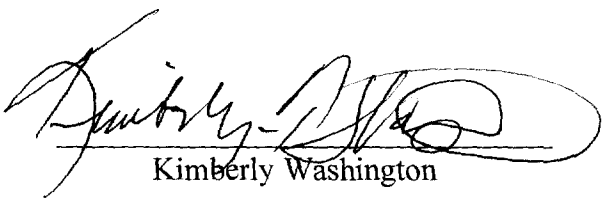

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